> "Thus, this term in Richfield Oil Corporation v. State Board of Equalization, *supra,* despite the fact that the Supreme Court of California had reversed a judgment without directions, we determined on the entire record and upon an independent investigation of California law that the judgment was final for the purposes of § 237. In the first place, the facts had been stipulated and, so far as appeared, the stipulation would have been available and controlling upon a second trial. In the second place, the suit was one for a refund of a tax and under California law only those grounds presented in the prior claim for refund could be urged in the suit."[1]

To the same effect are: *Radio Station W. O. W. v. Johnson,* 326 U. S. 120, 124-127 (1945); *Richfield Oil Company v. State Board of Equalization,* 329 U. S. 571, 576 (1946); *Parker v. People,* 333 U. S. 571, 586 (1948).

When Federal questions have been adjudicated by a state court so as to control all further state proceedings and no new Federal questions can arise nor action be taken therein which would nullify adverse effects of prior determinations of Federal law, such state judgment is "final." Particularly is this true if further proceedings are primarily mathematical or ministerial in character.

The state court below finally determined five Federal questions (Petition p. 4) applicable herein and based thereon ordered the limited recovery complained of by Petitioners. These determinations will be binding in all later proceedings in the state courts. No further Federal questions can be raised. Adverse effect of erroneous rulings on Federal Statutory and Constitutional law cannot be re-

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[1]The California rule is the same in suits for recovery of taxes paid under protest. The taxpayer therein is limited to the "grounds specified in the protest." Revenue and Taxation Code Section 5139 (see Petition Appendix p. 4 for complete text).

moved by further acts of the trial court. Further proceedings directed are only to compute, by ministerial act, exact amounts of judgments ordered. Thus the trial court is directed to secure an administrative separation of the bank fixture value from that of the building and multiply it by the uncontested special assessment tax rate. The resulting sum is the ordered judgment in each case.

Republic Natural Gas Co. v. State of Oklahoma, 334 U. S. 62 (decided the same day as *Parker v. People, supra,* p. 1), the only recent authority cited by Respondents, is not opposed to the rule. It represents its narrow application in eminent domain and similar cases in which, unlike these proceedings, a litigant seeks to review in this Court the right to take property prior to the taking and prior to judicial determination of damages to be paid. On such facts, this Court has recognized that Federal questions arising in subsequent proceedings are usually as serious as in the first and that, human nature being what it is, a large award of damages may well remove the litigant's desire to raise any Federal questions.[2]

In this case, contrary to Petitioners' contentions, the court below has held them entitled to recovery from

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[2]In *Republic Natural Gas Co. v. State of Oklahoma,* 334 U. S. 62, 71-72, Frankfurter, J., speaking for a majority of this Court said:

> "in an eminent domain case, as in a case like this, the fate of the whole litigation may well be affected by the fate of the unresolved contingencies of the litigation. An adequate award in an eminent domain case or a profitable rate in the case before us might well satisfy the losing party to acquiesce in the disposition of the earlier issue. . . .
>
> "The policy against fragmentary review has therefore little bearing. But contests over valuation in eminent domain cases, as price-fixing in this type of case, are inherently provocative of constitutional claims. This potentiality of additional federal questions arising out of the same controversy has led this Court to find want of the necessary finality of adjudicated constitutional issues in condemnation decrees before valuation has been made."

Respondents only what the latter concede is a "comparatively nominal" judgment (p. 5). Furthermore, as pointed out by Respondents (p. 4), all that is further required is separation of the "fixture portion of the building" and application mathematically thereto of the special assessment tax rate. The judgment so providing is "final" under Section 237(a).

2. Petition Seeks Only to Review a Single Judgment of the Court Below.

Federal questions sought to be reviewed in this proceeding were disposed of by the California Supreme Court in a single written opinion [R. 317-330] and by a single docketed judgment of that court [R. 331]. A single petition for rehearing was filed below [R. 332-438] and was denied by single order of the California court [R. 439]. On these facts Respondents' Answer (p. 8) concedes the propriety of a "single petition and single record" but objects to the prayer for a "single writ."

In *First National Bank of Shreveport v. Louisiana Tax Commission,* 289 U. S. 60, 62, this Court on the more technical situation of appeal expressly held that there had been effective consolidation by similar acts of a State Supreme Court. It therefore denied a motion to dismiss the appeal made upon the ground that separate causes could not be reviewed by single appeal.

3. Federal Questions Raised Are Important and Substantial.

In an attempt to show that Federal questions raised by the Petition are unimportant and unsubstantial, Respondents' Answer states that Petitioners seek only to review of "a local deviation" from "a long-established state rule that fixtures are improvements and hence taxable as real property." In both respects such statement is factually incorrect.

Full importance of Federal questions raised by this Petition flows from the holding of the California Court that a state has power, under both R. S. 5219 and the Fourteenth Amendment, to tax national bank fixtures as real property while taxing all similar fixtures as personal property. Such determination affects not only all national banks but substantially all Federal agencies. The organic acts creating most Federal agencies include substantially similar tax provisions to those, in this respect, contained in R. S. 5219. (See Petition, footnote 3, pp. 10-11, for partial enumeration of such agencies with reference to organic statutes involved).

This is a test proceeding [R. 223] for "approximately seven hundred cases of like character that are now on file for the tax years 1941 to 1946, inclusive" in Los Angeles County, brought by all principal national banks and their landlords in said County. It is also a test case controlling five hundred other suits involving taxes levied in six other California Counties over the period 1941 to 1949, inclusive, wherein the same discriminatory practices are alleged to have been followed by other local assessment officials. Abandonment of discriminatory practices in Los Angeles County since 1946, asserted in the Answer (pp. 16-17), or adoption by the California Legislature of specific statute to prevent future violation of the Fourteenth Amendment in assessing buildings owned by landlords of national banks one way, and all other buildings another, in nowise minimize the importance or substantiality of Federal questions presented.

Neither was there, prior to the assessment and levy of the taxes involved herein, any "long-established" California rule requiring fixtures to be classified as improvements for tax purposes. It is true that Revenue and Taxation Code Sections 104 and 105 have existed in substantially their

present form for approximately eighty years. However, fixtures of the character of bank vault doors and counterlines were much later regarded as personal property for tax purposes and therefore, if owned by national banks, exempt from local taxation under R. S. 5219.[3] As late as 1906[4] the California Supreme Court expressly held that general rules as to what constituted personal property between individuals controlled for purposes of taxation. In 1909[5] the California courts held that a bank vault door installed by a bank lessee was a trade fixture and hence personal property. Both decisions were so palpably opposed to the present tax rule announced in 1946 in the *final* decision in the *Trabue-Pittman Case*[6] that the California Supreme Court therein expressly overruled the first and distinguished the second as not applicable for tax purposes. Complete lack of certainty in California tax law is indicated by the judicial history of the *Trabue-Pittman Case*. The first appellate decision rendered therein on July 24, 1945 held *both* vault doors and counterlines to be *personal property* and *exempt* from taxation under R. S. 5219.[7] The first Supreme Court decision therein rendered on April 9, 1946 held bank counterlines, because they were trade fixtures, to be *personal property* and *exempt* from state taxation although it took a contrary position as to vault doors. It was not until the final decision therein on December 10, 1946, after all taxes involved herein had been assessed, levied and collected (except as to the second half of taxes

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[3]*First National Bank of San Francisco v. San Francisco*, 129 Cal. 96, 61 Pac. 778 (1900); *San Francisco v. Crocker-Woolworth Building*, 92 Fed. 273 (1899).

[4]*Western Union Telegraph Co. v. Modesto Irrigation Co.*, 149 Cal. 662, 87 Pac. 190 (1906).

[5]*Woods v. Bank of Hayward*, 10 Cal. App. 93, 106 Pac. 730 (1909).

[6]29 C. (2d) 385, 400, 398.

[7]161 P. (2d) 10.

for 1946, the last year in controversy), that the "rule" referred to by Respondents in their Answer was definitely established in California.

Even in the *Trabue-Pittman Case* this "rule" was coupled with the caution that it could *not* be applied if there resulted "discrimination against Federal instrumentalities." Since the court therein expressly withheld consideration as to whether or not discrimination had occurred in Los Angeles County in the year 1941,[8] it was not until the decision below that California applied Respondents' "rule" regardless of conceded discrimination in its application to national bank fixtures. There is thus no doubt that Federal questions presented on the Petition are of extreme importance, substantial in character, and fully warrant review by this Court.

4. Judgment Below Cannot Be Rested Upon Adequate Independent State Grounds.

The Answer (pp. 17-18; 20-22; 23-24) asserts that the judgment below can be sustained upon adequate independent grounds of State law. Erroneous and inadequate as was the consideration by the California Supreme Court of the Federal questions involved in this case, it never claimed that its decision rested upon independent grounds of State law.

The now suggested grounds of State law are obviously inapplicable and inadequate. Discriminatory or double-taxation resulting from application of an additional tax on national bank income, expressly designed to compensate for exemption from local taxation of bank-owned personal property composed in part of vault doors and counter-lines, when such were taxed locally to the banks as improvements, is certainly not answered by asserting that

[8] 29 C. (2d) 385, 388.

the banks can recover the additional tax on their income from the State. On similar facts, and without more extensive record than here, such argument was rejected by this Court in *Hopkins v. Southern California Telephone Co.*, 275 U. S. 393, 403. At most, such assertion goes to but one of the three grounds upon which the bank petitioner seeks *certiorari.*

Again, it is inadequate to suggest, contrary to the trial court findings [R. 83], that national bank landlords could, or did, protect themselves against the discriminatory tax by lease covenant with their national bank lessees. Such argument was expressly rejected in *United States v. Allegheny County*, 322 U. S. 174, 189.

The assertion that, as tax refund suits are governed by equitable principles, the California Supreme Court could disregard without denial of due process of law under the Fourteenth Amendment, a state statute which prescribed the form and amount of judgment, is obviously fallacious. "It can never be emphasized too much" that a court's "own opinion as to the wisdom of the law must be wholly excluded" in the performance of "judicial duty." *Osborn v. Ozlin*, 310 U. S. 53, 66. Whatever principles of equity or of state "policy" were involved therein, the Legislature having prescribed the nature of the judgment, a withholding thereof presents a denial of due process of law. Such question was clearly raised by Petitioners at their first opportunity since the trial court scrupulously complied in its judgment with all applicable statutes, including the California Reassessment Statute (Petition, Appendix pp. 5-7) which is designed to give ultimate relief to public bodies in cases such as this.

Respectfully submitted,

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